UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,840	04/23/2001	Gary Alan Culliss		2049

7590 08/25/2004

Patent Administrator
Testa Hurwitz & Thibeault LLP
High Street Tower
125 High Street
Boston, MA 02110

EXAMINER	
HOOSAIN, ALLAN	
ART UNIT	**PAPER NUMBER**
2645	

DATE MAILED: 08/25/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/839,840	Applicant(s) CULLIS, GARY ALLAN	
	Examiner Allan Hoosain	Art Unit 2645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-15 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-13,15 and 17-20* is/are rejected.

7)☒ Claim(s) *14* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *20*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

1. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-8, 10-13, 15 and 17-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Kelly, Jr.** (US 4,941,168).

As to Claims 1,15, with respect to Figures 6-9, **Kelly** teaches an answering machine detection method for a voice message delivery system comprising the steps of:

(a) placing an outbound call to a telephone line of a Recipient (Figure 6, label 104);

(b) detecting a telephone line pick-up (Figure 6, label 108);

(c) playing a prompt (Figure 7, label 206);

(d) determining, at a voice message server, that the telephone line pick-up was by an existing answering machine when talk-over occurs at the same time as at least a portion of the

playing of the prompt, the talk-over comprising voice energy coming from the telephone line of the Recipient (Col. 6, lines 36-40).

As to Claims 3,17, **Brown** teaches the answering machine detection method of claim 1, further comprising:

(e) waiting for silence when the telephone line pick-up was by the existing answering machine (Figure 9, label 206);

(f) playing a first message when the telephone line pick-up was by the existing answering machine (Figure 7, label 210); and

(g) playing a second message when the telephone line pick-up was by a live Recipient (Figure 9, label 210).

As to Claims 4,18, **Kelly** teaches the answering machine detection method of claim 3, further comprising:

(h) detecting talk-over by the existing answering machine during the playing of the first message (Figure 7, label 210), and

(i) restarting the playing of the first message (Figure 7, label 224).

As to Claims 5,19, **Kelly** teaches the answering machine detection method of claim 3, wherein:

the first message is different from the second message.

As to Claims 6,20, **Kelly** teaches the answering machine detection method of claim 3, further comprising:

(h) playing at least one interactive option when the telephone line pick-up was by the live Recipient (Figure 9).

As to Claim 7, **Kelly** teaches the answering machine detection method of claim 6, further comprising:

(i) playing at least one interactive reject option when the telephone line pick-up was by the live recipient (Figure 9).

As to Claim 8, **Kelly** teaches the answering machine detection method for a voice message delivery system comprising the steps of:

(a) placing an outbound call to a telephone line of a live Recipient (Figure 6, label 104);

(d) detecting a telephone line pick-up (Figure 6, label 108);

(c) playing, by a voice message server, a first voice message to the telephone line of the Recipient (Col. 3, lines 46-51 and Figure 7, label 210);

(d) playing, by the voice message server, a second voice message, different from the first voice message, that requests a touch-tone input from the telephone line of the Recipient, wherein the second voiced message is spaced from the first voice message (Col. 3, lines 58-64); and

(e) determining, after the playing of the first and second voice messages, that the telephone line pick-up was by a live Recipient when the requested touch-tone is received at the voice message server (Figures 7 and 9).

As to Claims 10-12, **Kelly, Jr**. teaches the answering machine detection method of claim 1, wherein the playing of the prompt occurs within one second of detecting the telephone line pick-up (Col. 6, lines 58-68).

As to Claim 13, **Kelly** teaches the answering machine detection method of claim 1, wherein the playing of the prompt introduces the outbound call to a live recipient (Figure 6, label 120).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly** in view of **Cox et al.** (US 6,396,920).

As to Claim 9, **Kelly** teaches the answering machine detection method for a voice message delivery system, comprising:

(a) recording, by a Sender, a voice message intended for a Recipient;

(b) placing an outbound call to a telephone line of the Recipient of the voice message;

(c) detecting a telephone line pick-up;

(d) requesting, by a voice message server, an input from the telephone line of the Recipient of the voice message; and

(e) determining that the telephone line pick-up was by a live Recipient of the voice message when the requested input is received from the telephone line of the Recipient of the voice message at the voice message server (Figures 7 and 9);

Kelly does not teach the following limitation:

"a specific speech input"

However, it is obvious that **Kelly** suggests the limitation. This is because **Kelly** teaches specific dial tone inputs and detecting speech (Figure 7, label 224 and Col. 7, lines 29-33). **Cox** teaches detecting specific DTMF or speech inputs (Col. 17, lines 11-30 and Col. 19, lines 45-46). Since **Kelly** and **Cox** are in analogous message delivery art and identifies recipients or answering machines at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add specific speech input capability to **Kelly's** invention for offering option inputs as taught by **Cox's** invention in order to provide message delivery services.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 3-15,17-20 have been considered but are moot in view of the new ground(s) of rejection and the following:

(a) **Kelly, Jr**. does not teach talk-over.

Examiner respectfully disagrees. **Kelly, Jr**. teaches detecting recordings whilst playing prompts (Col. 6, lines 25-28,36-40). This detection is talk-over as disclosed in the disclosure at Page 13, lines 11-16. This is because the Trigger silence detection and Duration time are started

at the same time when a message is played (See Figure 7, labels 202 and 212). Therefore, when the message is played both the Trigger and Duration are started. If silence is not detected then it can be concluded that both the message and the recording are occurring at the same time. This conclusion is supported because of the fact that a Person answering the call would have stopped speaking after hearing the message. This infers that in the case of an answering machine, the message and recording are played simultaneously.

(b) **Kelly, Jr**. does not teach determining that a called party is a Person after a first and second messages have been played.

Examiner respectfully disagrees. This is because **Kelly, Jr**. teaches that the message "one moment please ..." inherently suggests two messages. The first message is "one moment please" and the second message is inherently suggested by the "..." following the first message. The first message suggests a delay, and hence spaced apart, from the second message. The inherent suggestion is supported at Col. 7, lines 28-33 which teaches that the first message can be modified to require a called party to press a specific dial tone. These arguments by Examiner are also supported by the disclosure at Page 12, lines 14-15 and Page 13, lines 6-9.

(c) With respect to Claim 9, Examiner respectfully believes that it is proper to combine **Cox** with **Kelly, Jr**. to achieve the claimed 'specific speech input' for the same reasons given in the rejection of claim 9.

(d) Examiner respectfully invites Applicant to contact Examiner to discuss possible amendments for overcoming the prior art of record.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

None

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231
or faxed to:

(703) 872-9314, (for formal communications intended for entry)

Or:

(703) 306-0377 (for customer service assistance)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Allan Hoosain** whose telephone number is (703) 305-4012. The examiner can normally be reached on Monday to Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Fan Tsang**, can be reached on (703) 305-4895.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Allan Hoosain

Allan Hoosain
Primary Examiner
8/10/04